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TALKING POINTS 論點

From Shareholder Primacy to Stakeholder Model: New Mindset and Practical Measures

從股東至上到持份者模式：新思維與實際措施

In the past few decades, the single-minded pursuit of short-term profits and maximised shareholders' values (MSV) demonstrated by many corporate executives at the expense of the interests of non-shareholder stakeholders (such as employees, customers, the community and the environment) has been responsible for many problems of today's rotten capitalism. Such behaviour has led to market instabilities, wider income gaps, and more conflicts between corporations and the general public.

One major faulty assumption of this MSV belief is that directors and executives are, by law, the agents of shareholders only, with a fiduciary duty to maximise their values only. The truth is that MSV is merely a common practice or market norm, rather than a law or a regulation. Recent new "constituency statutes" and court cases in North America clearly indicate that directors and executives have fiduciary duties to all relevant stakeholders.

To maintain the legitimacy and sustainability of capitalism, over the past decade, reflections, explorations and movements have emerged in the European and North American countries in the direction of actively converting the "shareholder primacy" model to the "shareholder-based" governance model. There is growing belief by the public that corporate executives should balance the interests of various stakeholders, apart from shareholder interests.

Fallacy and Consequences of MSV

Shareholder primacy and MSV both rest on the assumption that markets are highly efficient and function in a state of free and fair competition. Sadly, this is not the case in today's complex and distorted business environment in which imperfect markets and market failures prevail. Even making money legally and ethically can harm certain social interests, generating social costs such as environmental pollution and unemployment.

在過去幾十年，很多企業高層只顧單一地追求短期利潤和股東價值最大化（Maximizing Shareholders' Values，簡稱MSV），犧牲了非股東持份者（如員工、顧客、公眾及環境）的利益，是導致今天許多腐敗資本主義問題的原因。這些行為已導致市場不穩定、收入差距擴大、以及企業與公眾之間的更多衝突。

MSV信念的一個錯誤假設是董事及管理高層在法律上只是股東的代理人，只向股東負上受信責任確保股東價值最大化。但事實上這只是一個習慣觀念或市場常規而非法規。近年北美一些新的州立法及法庭個案已清楚說明董事及高層必須向所有不同持份者負受信責任。

為了維持資本主義的正當性及可持續性，過去十多年歐美各國出現了一些反思、探索和運動，積極將「股東至上」模式轉變為「持份者為本」管治模式。大眾越來越相信企業高層不應只專注於股東利益，亦應平衡不同持份者的利益。

MSV的謬誤和後果

股東至上和股東價值最大化均假設市場非常有效率，並在自由和公平競爭的狀態下運作。不幸地，在今天複雜和被扭曲的商業環境中，情況並非如此，不完全市場與市場失效乃司空見慣。即使守法合德地賺錢也可能損害某些社會利益，產生社會成本，如環境污染和失業。

自20世紀中，視股東至上和追求MSV的概念在商界頗為普遍，並在商學院內廣泛傳授。一些長期存在的誤解導致了MSV被廣泛依從，包括認為法律上董事及管理高層，只向股東負上受信責任。

Since the mid-twentieth century, the belief in shareholder primacy and MSV has been embedded in the business sector, and is widely taught in business schools. Certain long-standing misconceptions have contributed to the broad adherence to MSV, including the belief that directors and executives are, perceived by law, the agents of shareholders alone with a fiduciary duty to maximise their value.

In fact, corporate laws in most markets have granted certain privileges to shareholders, including the right to sell their shares at any time, while other stakeholder groups are unable to terminate their relationship with corporations at any time so easily.

One of the unfortunate consequences of the MSV fallacy is that many senior executives focus on the stock market alone, overlooking the importance of the product market. Executive remuneration and share-option schemes have offered excessive and unjustified compensation to senior executives (for instance, in 2012, CEO compensation in the US could be 350 times that of a regular employee), encouraging them to take high risks to pump up the share price in the short term. In line with the MSV concept, corporations have the propensity to implement policies that allow for a surge in corporate borrowing, high dividends and frequent share repurchases, and reduced investments in product R&D.

A study published in *The Economist* found that the doubling of stock repurchases in recent years had led to an 8% fall in corporate R&D spending. Furthermore, under the impetus of MSV, the average stockholding period of institutional investors in S&P 500 companies has fallen from an average of eight years in the 1960s to just four months today. The average lifespan of corporations has also declined, falling from 55 years in the 1950s to 15 years at present. Several empirical studies have shown that a singular focus on MSV leads to myopic management, and adverse effects on long-term shareholder gains, growing macroeconomic instability and financial market fluctuations.

Social Contract and Balance of Interests

In fact, corporations (or “companies”) have existed for around 2,000 years. They originated in Western Europe where only companies dealing in public utilities (such as water supply or canal construction) were eligible to incorporate as a legal person, and their operations were restricted in terms of business duration and scale. They initially served as essential social institutions, obliged to adhere to a social contract, which consider the interests of a range of stakeholder groups as well as lawfully making profits.



事實上，很多經濟體的公司法已給予股東一些特權，包括股東可隨時變賣其股份，但其他持份者並不能隨時及容易地終斷他們與公司的關係。

MSV 謬誤的其中一個不幸後果，就是導致很多企業高層只專注於虛擬的股市而輕視真實的產品市場。過份或濫用的高管股票期權薪酬計劃令到管理層過份冒險以爭取短期股價上升，也導致過高不合理的新酬（例如在美國 2012 年，一個 CEO 的新酬可以是一個普通員工的 350 倍）。在 MSV 的理念下，企業傾向實行高借貸、高股息及頻密回購股份的政策，但減少產品創新研發的投資。

《經濟學人》有證據顯示，近年的雙倍回購股份支出令企業的研發支出減少約 8%。此外，MSV 也令機構投資者對 S&P500 公司的持股期由 60 年代的平均八年跌至現今的四個月，而企業的平均壽命由 50 年代的約 55 年減至現今的 15 年。實證研究結果也顯示，企業單一著重 MSV 導致很多短線投機行為，對股東的長遠回報反而有負面影響，也嚴重導致宏觀經濟不穩和金融市場的大幅波動。

社會契約與平衡利益

註冊有限公司 (Corporations or Companies) 已有二千年的歷史，起初在西歐只有公用事業組織（如供水或興建運河）可獲此法人註冊資格，其營運有一定

Corporations today, by contrast, enjoy a variety of privileges hitherto unavailable. These include unlimited lifespan, limited liability and the right to own shares in other corporations. Unfortunately, many have gradually become mainly moneymaking machines orientated towards the profits of shareholders. Only through a return to the original concept of corporations can we forge mutual trust and beneficial relationships amongst corporations, governments and societies.

Accordingly, there have been growing calls to return to a corporate concept that has fallen out of vogue, that is, social contracting theory and stakeholder model. There is also growing belief by the public that corporate executives should not concentrate solely on shareholder interests through profit maximisation, but should also balance the interests of various stakeholders to earn reasonable and sustainable (rather than maximised) profits. Stakeholder theory posits that non-shareholder stakeholders should be consulted on the major decisions that companies take.

R. Edward Freeman, one of the first advocates of stakeholder theory, defined stakeholders as all parties engaging in a reciprocal relationship with the corporation and who are vital to its survival and success. He identified six such stakeholder groups: shareholders, management, employees, customers, suppliers and the local community (including the environment). These groups have the right to demand the management to take certain actions, and they expect not to be treated as the mere means to an end.

Based on stakeholder theory, Freeman further developed the Doctrine of Fair Contracts with the purpose to provide a fair and efficient way of dealing with the potential conflicts of interests that may arise among stakeholders. The parties involved in developing policies and agreements should not be able to predict the effects that those policies/agreements will have on themselves and others, thus helping to ensure fair treatment for all parties.

Despite its rigorous arguments and practical feasibility, however, stakeholder theory has several limitations. For example, difficulties may be encountered in determining who should be classified as a relevant stakeholder, and it is difficult to determine whose interests should be accorded priority. Therefore, academia needs to continue develop guidelines and practical methods based on the theory.

Advocating Stakeholder-based Governance

Over the past decade, a number of companies have been practising charitable corporate social responsibility (CSR) and creating shared value (CSV) initiatives, both of which aim to improve the public impression of business and to increase public values. However, if a corporation is predominately concerned with shareholders' interests, and has little regard for other stakeholders' perspectives, pouring resources into CSR/CSV is likely to have little effect as the root cause of many current problems still remain.

In sum, we need to put an end to shareholder primacy and create a new social norm. To these ends, the author of this paper has been advocating a new stakeholder-based governance model including at least the following practical measures:

年期和規模的限制。它們是社會的一個重要組成機關 (Social Institution)，要遵從一些社會契約 (Social Contracting)，除守法賺錢外，還要照顧不同持份者的利益。

相比之下，現今企業擁有一些以前沒有的特權，這包括無限壽命、有限責任及可以擁有其他公司股份的權利。不幸地，不少企業逐漸演變成股東盈利主導的賺錢機器。只有透過回到公司的最原始概念，我們才可以構建企業、政府與社會之間的互信共贏關係。

因此，社會上不斷有爭議應重回昔日曾採用的企業理論，即社會契約論與持份者理論。大眾越來越相信企業高層不應只專注透過利潤最大化來保障股東利益，亦應平衡各持份者的利益以賺取合理和可持續利潤（而不是「賺到盡」）。持份者理論認為企業作重大決策時應諮詢非股東持份者的意見。

費里曼 (R. Edward Freeman) 是最早推動持份者理論的其中之一人。他界定「持份者」為所有與企業有相互關係並對企業成敗有重要影響的人。他的模式包括六類持份者：股東、高層、員工、顧客、供應商及社區（包括環保）。他們對企業管理層的決策有參與權，並且期望不會只被視為賺錢工具或手段。

費里曼根據持份者理論創立「公平合約學說」 (Doctrine of Fair Contract)，以公平有效地處理不同持份者團體之間的潛在利益衝突。所有參與制訂政策或協議的單位，須在達成協議前不能預計到商議的結果，及對自己及他人有何影響。這可確保所有參與者受到公平對待。

持份者理論雖有嚴謹的論據及實務上的可行性，但它仍有一些限制。例如界定誰是有關的持份者有一定困難，也不容易釐訂那些持份者的利益應享有優先考慮。因此學界還須繼續設立一些更切實可行的框架與方法以落實持份者理論的精神。

倡議社會契約與持份者為本管治

在過去十年，一些企業從事公益性企業社會責任 (Corporate Social Responsibility, 簡稱 CSR) 及創造共享價值 (Creating Shared Value, 簡稱 CSV) 活動，兩者都旨在改善大眾對商界的印象及增加公共價值。然而，如果企業只專注於股東利益、不著重持份者的看法，即使大幅投入資源於 CSR 或 CSV，其效果可能很有限，因很多當前問題的根本原因仍然存在。

總括來說，我們需要結束以股東利益為上的市場慣例，並創造一個新的社會規範。為此，筆者倡導一個新的以持份者為本的管治模式，其中包括至少以下實際措施：

- 透過修訂相關法規，確保企業將董事及管理高層的法定授信責任擴展至其他主要持份者，以容許非股東持份者有法律權利以集體訴訟挑戰董事會決定。

- ◆ To revise relevant laws and regulations ensuring that corporations extend the fiduciary duty of directors and executives to include other major stakeholders; allowing non-shareholder stakeholders to exercise their legal rights to file class actions against board decisions;
- ◆ To reform the structure of boards of directors to include at least one representative of their employees in the board composition, with the board gradually growing to include representatives of other non-shareholder stakeholder groups;
- ◆ To form a Stakeholder Advisory Council comprising different stakeholder groups to discuss future development directions and to seek feedback on major decisions;
- ◆ To reform the executive compensation scheme which should be based on company product market performance, and non-shareholder stakeholders and other non-financial performance indicators' assessments (rather than stock price performance mainly). The issuing of executive stock options should also be phased-out gradually;
- ◆ To compensate the operational level employees reasonably by committing a minimum of some 30% of the corporation's annual net profit as staff bonus; thereby reducing pay gaps to a more reasonable level. Corporations should also set a more reasonable basic pay for front-line employees (including a competitive minimum wage) and optimise the benefits of retirees; and
- ◆ To undertake at least one sizeable social innovation project related to their core businesses at any one time to help resolve some pressing social problems and enhance corporate profits. Innovation projects could be developed by the corporation or in collaboration with other stakeholders and/or sectors, including other mainstream corporations, NGOs, social enterprises and benefit corporations.

Changes in the Values of Business as Force for All-Win

We hope the engines of global capitalism will be fundamentally revamped going forward.

Returning to the social contracting theory and the stakeholder-based governance model requires a transformation process. One way to begin the reform is for every corporation to take concrete, measurable steps. That transformation process relies on some trail-blazing businesses and academic leaders to create a reform power base.

This goal can be accomplished by educating university students on the concepts of the social contract and the participatory role of various stakeholders.

To nurture responsible global business leaders for the twenty-first century and help restore the core values of the free-market economy, we need to make a concerted effort to redefine the objectives and responsibilities of corporations. Only in this way can we attain a promising future for a free-market economy and university management education. **M**

The article only represents the author's personal views.



- ◆ 改革董事會的組成，將至少一個席位撥給員工代表，再逐步納入其他非股東持份者代表。
- ◆ 設立一個持份者諮詢議會（Stakeholder Advisory Council），由不同持份者代表組成，共同商議企業的未來發展方向和對重大決策作諮詢。
- ◆ 改革管理層薪酬獎賞制度，建議將獎賞機制與公司產品市場表現、及非股東持份者與其他非財務表現指標的評價（而非只是股價）作掛鉤，並逐漸取消發行高層股份期權獎賞計劃。
- ◆ 給予普通員工合理的薪酬，公司高層可承諾將每年的純利，如不少於百分之三十作為中下層員工花紅獎賞，因此最高層與低層員工的薪酬差距縮小至較合理水平。企業亦應給予前線低層員工更合理的待遇（包括提升最低工資），及優化員工的退休福利。
- ◆ 建議企業高層在任何一個時間推行至少一個與核心業務相關的大型社會創新計劃，以幫助解決某些急切社會問題及提高企業利潤。這些創新計劃可以由企業單獨進行，或聯同其他持份者及/或界別，包括其他企業、NGOs社企及共益企業（Benefit Corporations）。

企業追求共贏的價值改變

重回社會契約與持份者為本模式需要一個轉化過程，企業採取踏實的措施就是第一步。

此過程有賴地區內有遠見智慧的商界領袖與商學院學者作出先行者的角色，率先帶領整個運動的推進。

這個目標可以透過教育大學生有關社會契約概念及不同持份者的參與角色來實現。

要培養21世紀負責任的商界領袖及恢復自由市場的核心價值，我們必須重新確定企業的目的和責任。只有這樣，我們才可看到自由市場與大學管理教育的未來。 **M**

文章只代表筆者個人意見。